

# Exhibit D



Sarah Cohen <sarah@tomorrowlaw.com>

## Thoma v. VXN et al. -- Meet & Confer Effort, Friday, Oct. 13, 2023 at 3:00 pm: Issues in the case where we can Agree.

6 messages

Eric Clopper <eclopper@kanelaw.la>

Thu, Oct 12, 2023 at 7:30 PM

To: Sarah Cohen <sarah@tomorrowlaw.com>

Cc: "jeff@tomorrowlaw.com" <jeff@tomorrowlaw.com>, "david@tomorrowlaw.com" <david@tomorrowlaw.com>, Brad Kane <bkane@kanelaw.la>

Sarah,

In hopes that you will meet and confer tomorrow, I wanted to brief you on some of the issues. Maybe there are issues we can agree on, which may reduce the need for or scope of motion practice.

### Issues We May Agree On:

1. First and foremost, can we agree that California's Industry Wage Orders predominate over California's Occupational Wage Orders? *See, e.g., Niazi v. Tatilek Support Servs., Inc.*, No. 215CV07403SVWJPRX, 2018 WL 1725077, at \*2 (C.D. Cal. Apr. 2, 2018) (explaining occupational orders control only if there is no applicable industry wage order).
2. Second, can we agree that Wage Orders are not segregable between differing tasks for the same employer? In other words, whether an employee's work for a single employer can be governed by more than 1 Wage Order?
3. Can we agree that your client ultimately must produce some inaccurate wage statements to bring the 226 claim? If we can agree on a reasonable time limit for your client to produce inaccurate wage statements, perhaps we can stipulate to a resolution of that issue. Otherwise, please advise if/when your client will be providing the documentation that you should have received from your client before filing almost 6 months ago on April 20, 2023.
4. Now that your client has filed the requisite PAGA action to support a Labor Code § 204, can we agree that the section 204 claim does not provide a private right of action and voluntarily dismiss it? *Rivera v. Ryder Integrated Logistics, Inc.*, 2022 WL 18337685, at \*14 (C.D. Cal. 2022)
5. Can we agree that your client must allege: (i) how or when Defendants failed to reimburse her; and (ii) whether your client sought reimbursement and was refused?

Finally, I am considering asking the Court for oral argument on the next set of motions, as I have less than 5 years of practice. Do you any thoughts on the issue?

Best,

Eric

Eric Clopper

Senior Associate

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**Sarah Cohen** <[sarah@tomorrowlaw.com](mailto:sarah@tomorrowlaw.com)>

Fri, Oct 13, 2023 at 9:00 AM

To: Eric Clopper <[eclopper@kanelaw.la](mailto:eclopper@kanelaw.la)>

Cc: Brad Kane <[bkane@kanelaw.la](mailto:bkane@kanelaw.la)>, Emanuel Munguia <[emanuel@tomorrowlaw.com](mailto:emanuel@tomorrowlaw.com)>, Nadia Rodriguez <[nadia@tomorrowlaw.com](mailto:nadia@tomorrowlaw.com)>, Rafael Yedoyan <[rafael@tomorrowlaw.com](mailto:rafael@tomorrowlaw.com)>, "david@tomorrowlaw.com" <[david@tomorrowlaw.com](mailto:david@tomorrowlaw.com)>, "jeff@tomorrowlaw.com" <[jeff@tomorrowlaw.com](mailto:jeff@tomorrowlaw.com)>, [thomavvxngrouppllcetaz11731883@projects.filevine.com](mailto:thomavvxngrouppllcetaz11731883@projects.filevine.com)

Eric,

I will need additional time to look into these issues as this is the first time they have been raised. Further, I am unexpectedly out of the office today and unavailable for a call. Let's touch base next week.

Thank you.

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**Eric Clopper** <[eclopper@kanelaw.la](mailto:eclopper@kanelaw.la)>

Fri, Oct 13, 2023 at 12:16 PM

To: Sarah Cohen <[sarah@tomorrowlaw.com](mailto:sarah@tomorrowlaw.com)>

Cc: Brad Kane <[bkane@kanelaw.la](mailto:bkane@kanelaw.la)>, Emanuel Munguia <[emanuel@tomorrowlaw.com](mailto:emanuel@tomorrowlaw.com)>, Nadia Rodriguez <[nadia@tomorrowlaw.com](mailto:nadia@tomorrowlaw.com)>, Rafael Yedoyan <[rafael@tomorrowlaw.com](mailto:rafael@tomorrowlaw.com)>, "david@tomorrowlaw.com"

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"thomavvxngroupllcetalz11731883@projects.filevine.com" <thomavvxngroupllcetalz11731883@projects.filevine.com>

Sarah,

First, I hope that whatever issues that are unexpectedly keeping you out of the office and unable to take telephone calls are not health related and hope everything turns out ok for you and your loved ones.

Second, all issues were previously included in the first motion to dismiss, so they are *not* new. Instead, in the spirit of the Court's order and to facilitate the meet and confer process, the meet and confer email simply better separates out the sub-issues, so we can identify any potential areas of agreement to narrow the scope of the motion practice.

Third, given your unexpected unavailability today, are any of the other attorneys working on the case able to step in and handle the meet and confer?

Alternatively, could you please send me your, David and Jeff's availability for Saturday through Monday (10/14-10/16) for our second latest attempt to satisfy our Rule 7-3 meet and confer obligations prior to Defendants filing their 12(b)(6)?

Finally, in the event we can agree on some of the issues in the case, Defendants are willing to stipulate to your client filing a Second Amended Complaint to take those issues off the table and reduce the burden on the Court.

Please let me know.

Best,

Eric

Eric Clopper

Senior Associate

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**Sarah Cohen** <sarah@tomorrowlaw.com>

Wed, Oct 18, 2023 at 9:24 AM

To: Eric Clopper <eclopper@kanelaw.la>

Cc: Brad Kane <bkane@kanelaw.la>, Emanuel Munguia <emanuel@tomorrowlaw.com>, Nadia Rodriguez

<nadia@tomorrowlaw.com>, Rafael Yedoyan <rafael@tomorrowlaw.com>, "david@tomorrowlaw.com"

<david@tomorrowlaw.com>, "jeff@tomorrowlaw.com" <jeff@tomorrowlaw.com>,

"thomavvxngroupllcetalz11731883@projects.filevine.com" <thomavvxngroupllcetalz11731883@projects.filevine.com>

Good Morning Eric,

What is your availability for a call on Friday? I am available from 930am - 1pm or from 330pm - 6pm.

Thank you.

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Kind regards,

**Sarah Cohen, Esq.**  
**Associate Attorney**

**Bibiyan Law Group, P.C.**

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**Eric Clopper** <eclopper@kanelaw.la>

Thu, Oct 19, 2023 at 6:02 PM

To: Sarah Cohen <sarah@tomorrowlaw.com>

Cc: Brad Kane <bkane@kanelaw.la>, Emanuel Munguia <emanuel@tomorrowlaw.com>, Nadia Rodriguez

<nadia@tomorrowlaw.com>, Rafael Yedoyan <rafael@tomorrowlaw.com>, "david@tomorrowlaw.com"

<david@tomorrowlaw.com>, "jeff@tomorrowlaw.com" <jeff@tomorrowlaw.com>,

"thomavvxngroupllcetalz11731883@projects.filevine.com" <thomavvxngroupllcetalz11731883@projects.filevine.com>

Sarah,

We look forward to discussing the issues raised in my October 12, 2020 email tomorrow (10/20), at 4:00 p.m.

Once you confirm, I will send the Zoom invite.

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**Sarah Cohen** <sarah@tomorrowlaw.com>

Thu, Oct 19, 2023 at 7:49 PM

To: Eric Clopper <eclopper@kanelaw.la>

Cc: Brad Kane <bkane@kanelaw.la>, Emanuel Munguia <emanuel@tomorrowlaw.com>, Nadia Rodriguez <nadia@tomorrowlaw.com>, Rafael Yedoyan <rafael@tomorrowlaw.com>, "david@tomorrowlaw.com" <david@tomorrowlaw.com>, "jeff@tomorrowlaw.com" <jeff@tomorrowlaw.com>, "thomavvxngroupllcetalz11731883@projects.filevine.com" <thomavvxngroupllcetalz11731883@projects.filevine.com>

4pm is fine.

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